IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4789 OF 2006

Anandrao Bapurao Ghate-Jadhav
and others ... Petitioners

versus

Tanaji Jijaba Jagtap and others ... Respondent

L.S.Gaikwad for petitioners.
Sujata S. Mogre for respondent no.1.

CORAM : A.P.DESHPANDE, J.
DATE : 08th December 2006
PC :

1. One Chimaji had four sons by name Bapurao, Tukaram, Santu and Kalu. Tukaram had predeceased Chimaji. Chimaji had expired in the year 1942. Tukaram's wife, it is the case of the petitioner, had left the matrimonial house and was residing at her parents house. Respondent no.1 Tanaji claims that he has been adopted by Radhabai as son. Radhabai is wife of Tukaram. On the basis of the said adoption, respondent no.1 brought a suit for partition and separate possession of one fourth share in the joint family properties left behind by Chimaji. The suit came to be decreed and the decree is upheld up to the Supreme Court. The respondent no.1 thus started execution proceedings with a view to execute the judgement

and decree for partition and separate possession.

2. After the petitioners lost in the Supreme Court they instituted a civil suit for declaration that the decree passed in favour of the respondent no.1 stands vitiated by fraud and in the said suit an application for stay of the execution, came to be moved. The rejection of the said application filed by the petitioners, has given rise to the filing of this writ petition.

3. The learned counsel appearing for the petitioner submits that the decree obtained by respondent no.1 was so obtained by playing fraud inasmuch as Radhabai had in fact, according to the petitioner, expired on 10th February 1969 in the morning, whereas, the date of her death came to be wrongly entered in Gram Panchayat Records as 11th February 1969 and an Adoption Deed has been registered with the Sub Registrar on 10th February 1969 at 1.30 p.m.. The learned counsel for the petitioner further tried to point out that Radhabai’s death is recorded in the Birth and Death Registrar on 11th February 1969 and thus, in his submission, the case of adoption which was decreed in favour of the respondent

no.1 was on account of fraud played by respondent no.1. All the issues raised in this petition touching the merit of the suit or touching the fraud with regard to the adoption are required to be dealt with in the suit which is pending. The only question that requires consideration at this stage is has the Trial Court committed patent illegality in rejecting the stay application moved by the petitioners?

4. Perused the impugned order. The impugned order does not suffer from any patent illegality requiring interference under Article 227 of the Constitution of India. If and in case the petitioners finally succeed in the suit which has been filed seeking declaration that the decree obtained by respondent no.1 was obtained by playing fraud on the Court, then the petitioners would be entitled to receive the property which would come to the respondent no.1 on execution of the decree passed prior in point of time. The petitioner can very well claim restitution if and in case he succeeds in the suit. In the result, since there being no merit in the writ petition, it stands dismissed summarily. Issuance of Certified copy is expedited.

(A.P.DESHPANDE, J.)